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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:	Case No.: 17-13797-9-B
TULARE LOCAL HEALTHCARE DISTRICT dba TULARE REGIONAL MEDICAL CENTER,	Chapter 9
Debtor.	ADV. PROC. NO.: 17-01095-B
_____	DC No.: OHS-1
HEALTHCARE CONGLOMERATE ASSOCIATES, LLC,	HEALTHCARE CONGLOMERATE ASSOCIATES, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR REMAND OF LAWSUIT TO STATE COURT PURSUANT TO 28 U.S.C. § 1452(b)
Plaintiff,	
v.	
TULARE LOCAL HEALTHCARE DISTRICT dba TULARE REGIONAL MEDICAL CENTER, and DOES 1 through 20,	Date: February 28, 2018 Time: 1:30 p.m. Dept: Courtroom 13 Judge: Hon. René Lastreto II
Defendant.	

AND RELATED COUNTER-CLAIM	

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1 **I. INTRODUCTION**

2 Debtor Tulare Local Healthcare District dba Tulare Regional Medical Center (“TRMC”)
3 unlawfully removed to this Court a pre-bankruptcy lawsuit (“Lawsuit”) filed against it in Los
4 Angeles Superior Court by HealthCare Conglomerate Associates, LLC (“HCCA”). The Lawsuit
5 alleges state law claims for breach of contract and associated declaratory relief. Removal of the
6 Lawsuit to other than the federal district in which the Los Angeles Superior Court is located, i.e.
7 the Central District of California, violates the express provisions of 28 U.S.C. § 1452(b), upon
8 which TRMC relies for its purported authority to remove to this District. Even removal to the
9 Central District would be permitted only if that court “has jurisdiction under section 1334 of this
10 title [Title 28],” which it does not. 28 U.S.C. § 1452(a). Accordingly, the Lawsuit is not subject
11 to removal.

12 Under established authority in other circuits, the Court lacks subject matter jurisdiction
13 over the entire Lawsuit, including the counterclaim (“Counterclaim”) TRMC filed in response to
14 the Lawsuit. Under any view of the matter, this Court is an improper venue requiring remand to
15 the Los Angeles Superior Court, the exclusive litigation forum expressly selected by the parties in
16 their Management Services Agreement (“MSA”).

17 In addition to the applicable law requiring remand, remand also is necessary on the basis
18 of equity given the parties’ contractual choice of Los Angeles Superior Court as the exclusive
19 venue for litigation of their disputes, the fact that the Lawsuit involves state law claims, many of
20 which entail a right to jury trial, and the additional compelling equitable factors discussed herein.

21 Accordingly, for the reasons discussed in detail below, the Lawsuit should be remanded to
22 the Los Angeles Superior Court.

23 **II. FACTS AND PROCEDURAL HISTORY**

24 **A. The State Court Lawsuit.**

25 On September 15, 2017, HCCA filed the Lawsuit against TRMC in Los Angeles Superior
26 Court. HCCA’s complaint (“Complaint”) alleges straightforward claims for declaratory relief

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1 and breach of the MSA under which HCCA agreed to provide management services to TRMC.¹
 2 A true and correct copy of the Complaint is attached as Exhibit A to the Notice of Removal of
 3 Lawsuit (“Notice of Removal”), Dkt. No. 4, pp.9-20.

4 The Complaint references § 11 (d) of the MSA, which provides “the exclusive jurisdiction
 5 and venue of all actions, claims, or other legal proceedings arising in any manner pursuant to this
 6 Agreement shall be vested in the [Los Angeles Superior Court] and in no other.” Dkt. No. 4
 7 (Exhibits to Notice of Removal), p. 10 (at 1:25-27).

8 The Complaint also alleges “All or part of this dispute is subject to arbitration under
 9 California Code of Civil Procedure section 1281.2 and section 10(e)(ii) of the MSA.” Dkt. No. 4,
 10 pp. 10-11 (at 1:28-2:1).² The Complaint acknowledges the potential applicability of the MSA’s
 11 arbitration provision as follows:

12 HCCA specifically asserts the applicability of, and does not waive, the parties’
 13 agreement to arbitration. HCCA has served upon the District [TRMC] a formal
 14 letter notice of material breaches of the MSA and defaults pursuant to sections
 15 10(a)(i) and 10(e)(i) of the MSA. The breaches and defaults of the MSA by the
 16 Defendants which were curable have not been cured and the balance of the
 17 breaches and defaults are not capable of being cured. Plaintiff has complied with
 all applicable claims procedures pertaining to presentation of claims against the
 District [TRMC], as set forth in the MSA. The parties have yet to meet and confer
 to determine if they will jointly waive their right to arbitration and proceed with
 this civil action.³

18 Dkt. No. 4, p. 11(at 2:8-15).

19 **B. The Removal of the State Court Lawsuit to This Court.**

20 The Lawsuit was served upon TRMC prior to the filing of this chapter 9 case. The Notice
 21 of Stay of Proceedings in the Lawsuit was served by TRMC on October 5, 2017. On
 22 December 28, 2017, the Lawsuit was removed by TRMC from Los Angeles Superior Court to the

23 ¹ The MSA is attached as Exhibit 3 to the Counterclaim filed by the District. *See* Dkt. No. 11, Ex. 3 (pp. 14-93 of the
 24 docketed PDF)

25 ² Section 10(e)(ii) of the MSA provides that: “If the claim of default is disputed by the party receiving such notice
 26 [of default], within ten (10) business days thereafter the party receiving the notice shall give notice to the charging
 27 party that the party receiving such notice disputes that the factual matters alleged constitute a default under this
 Agreement. If the parties cannot resolve such dispute, the parties shall submit such matter to binding arbitration in
 Los Angeles County, California, in accordance with the American Health Lawyers Associates Alternative Dispute
 Resolution Services Rules and Procedure for Arbitration, and applying the Law of the State.” Dkt. No. 4, pp. 10-11
 (at 1:28-2:6).

28 ³ Nor has the breach been cured that occurred when this Court made its order granting the District’s motion for
 authorization to reject the MAS on November 1, 2017. Dkt. No. 174.

1 Eastern District of California, Fresno Division, purportedly pursuant to 28 U.S.C. §§ 1334(b),
2 1452(a), 157 and Bankruptcy Rule 9027. Dkt. No. 1 (Notice of Removal), 4, 1:11-14.

3 The Notice of Removal states that the Lawsuit “asserts a substantial breach of contract
4 claim against TRMC.” Dkt. No. 1, 2:23-24. It further asserts that TRMC disputes any and all
5 claims made by HCCA in the Lawsuit and believes it has valid counterclaims against HCCA. *Id.*
6 2:24-25. In support of its purported right to remove, TRMC states: “28 U.S.C. § 1452(a) permits
7 removal of any claim or cause of action to the district court for the district where such civil action
8 is pending provided that such district court has jurisdiction of such claim or cause of action under
9 28 U.S.C. § 1334.” Dkt. No. 1, 3:1-3. TRMC did not attempt to remove the Lawsuit to the
10 Central District of California -- the district in which the Lawsuit was pending,

11 After its violation of title 28 by removing to the wrong district, on January 4, 2018,
12 TRMC filed its answer as well as the Counterclaim. The Counterclaim is a smorgasbord of
13 claims and theories, many of which are specious and not pled in accordance with fundamental
14 rules of pleading. The Counterclaim includes 11 overlapping causes of action pled largely on
15 “information and belief,” claims at law (e.g. allegations split up among four overlapping claims of
16 “fraud”); claims in equity (including equitable subordination, for an equitable accounting, and for
17 cancellation of trust deed); and allegations against 50 doe defendants in clear violation of federal
18 rules of pleading. *See generally* Dkt. No. 9 (Counterclaim), p. 1.

19 The District’s answer to HCCA’s Complaint raises similar concerns. Because the
20 Complaint was not verified, prior to the putative removal a simple general denial would have
21 sufficed for an answer, an effort that would have taken an hour or less. Instead, TRMC opted for
22 10 pages covering almost every defense known and many unknown to the legal profession, many
23 of which are mere conclusions of law and thus lack the specificity to withstand a demur or motion
24 to strike (e.g. statute of limitations, comparative fault, third party fault, failure to mitigate, waiver,
25 estoppel, laches, intervening cause, unclean hands, offset, and the crown defense of violation of
26 unspecified “constitutional clauses”).

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1 On January 10, 2018, HCCA filed its Statement of Non-Consent Regarding Removed
2 Action [Bankruptcy Rule 9027(e)(3)]. Dkt. No. 13. HCCA does not consent to the entry of final
3 orders or judgment by this Court.

4 The improper removal to this Court places new and avoidable costs on this proceeding
5 and burden on this Court. As now presented, both law and equity dictate the Lawsuit should be
6 remanded to Los Angeles Superior Court.

7 **III. ARGUMENT**

8 There is a “strong presumption” against removal jurisdiction. Such jurisdiction must be
9 rejected “if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*,
10 980 F.2d 564, 566 (9th Cir. 1992). The party seeking removal bears the burden of overcoming
11 this strong presumption. *Id.*; see also *Federal Home Loan Bank of Chicago v. Bank of Am. Sec.*
12 *LLC*, 448 B.R. 517, 523 (C.D. Cal. 2011). Removal statutes are construed strictly because
13 removal jurisdiction raises federalism concerns. See *Shamrock Oil & Gas Corp. v. Sheets*, 313
14 U.S. 100, 108-109 (1941). “By narrowly construing removal statutes, federal courts preserve the
15 independence of state governments.” *Somlyo v. J. Lu-Rob Enterprises, Inc.*, 932 F.2d 1043, 1045
16 (2d Cir. 1991).

17 Under cases decided by other federal circuits, removal without lawful authorization does
18 not bestow subject matter jurisdiction on the court to which the action is removed. *In re Nat’l*
19 *Developers, Inc.*, 803 F.2d 616, 620 (11th Cir. 1986); *In re Bobroff*, 766 F.2d 797, 801-802 (3rd
20 Cir. 1985). Even where subject matter jurisdiction exists, defects in removal procedure
21 necessitate remand. *Kamm v. ITEX Corp.*, 568 F.3d 752, 755-756 (9th Cir. 2009); *Roskind v.*
22 *Morgan Stanley Dean Witter & Company*, 165 F.Supp.2d 1059, 1063 (N.D. Cal. 2001). Even
23 minor defects are considered grounds for remand. For example, an objection that a removal is
24 untimely because it is filed just one day late nullifies the removal. See *Fristoe v. Reynolds Metals*
25 *Co.*, 615 F.2d 1209, 1212-1213 (9th Cir. 1980) (finding that party had waived its right to object to
26 a removal filed one day late, but noting that the removal time limit “is mandatory and a timely
27 objection to a late petition will defeat removal”).

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1 Even if a removal is authorized in the first instance, the case may be remanded to the court
2 from which it was removed “on any equitable ground.” 28 U.S.C. § 1452(b). The “any equitable
3 ground” standard is “an unusually broad grant of authority” that “subsumes and reaches beyond
4 all of the reasons for remand under non bankruptcy removal statutes.” *In re McCarthy*, 230 B.R.
5 414, 417 (9th Cir. BAP 1999). The statute does not further define “equitable ground.” To guide
6 the identification of “equitable grounds,” cases import the fourteen factors governing
7 discretionary abstention to guide the remand decision. *In re Roman Catholic Bishop of San*
8 *Diego*, 374 B.R. 756, 761-762 (Bankr. S.D. Cal 2007) (quoting *In re Enron Corp.*, 296 B.R. 505,
9 508-509 (C.D. Cal. 2003)). These factors are:

10 (1) the effect or lack thereof on the efficient administration of the estate if the
11 Court recommends [remand or] abstention; (2) extent to which state law issues
12 predominate over bankruptcy issues; (3) difficult or unsettled nature of
13 applicable law; (4) presence of related proceeding commenced in state court or
14 other non bankruptcy proceeding; (5) jurisdictional basis, if any, other than
15 § 1334; (6) degree of relatedness or remoteness of proceeding to main
16 bankruptcy case; (7) the substance rather than the form of an asserted core
17 proceeding; (8) the feasibility of severing state law claims from core
18 bankruptcy matters to allow judgments to be entered in state court with
19 enforcement left to the bankruptcy court; (9) the burden on the bankruptcy
20 court’s docket; (10) the likelihood that the commencement of the proceeding in
21 bankruptcy court involves forum shopping by one of the parties; (11) the
22 existence of a right to a jury trial; (12) the presence in the proceeding of non
23 debtor parties; (13) comity; and (14) the possibility of prejudice to other parties
24 in the action.

19 *In re Roman Catholic Bishop of San Diego*, 374 B.R. at 761-762. Although these factors can
20 assist a court’s remand decision, “they do not control it. The standard remains ‘any equitable
21 ground.’” *Id.*

22 Here, remand of the Lawsuit is required because the removal of the Lawsuit was in direct
23 violation of federal law. Even if remand were not required, which it is, remand is strongly
24 supported by the equitable factors discussed herein:

25 **A. TRMC’s Removal Violated 28 U.S.C. § 1452.**

26 The removal was not authorized by law. TRMC relies for its authority for removal on 28
27 U.S.C. 1452(a) which provides: “(a) A party may remove any claim other than a proceeding
28 before the United States Tax Court or a civil action by a governmental unit to enforce such

1 governmental units police or regulatory power, **to the district court for the district where such**
2 **civil action is pending**, if such district court has jurisdiction of such claim or cause of action
3 under Section 1334 of this title.” 28 U.S.C. § 1452(a) (emphasis added). Thus, § 1452(a) allows
4 parties to remove a civil action only to the district court “for the district where such civil action is
5 pending” and **then** only if that district court has jurisdiction under § 1334. 28 U.S.C. § 1452(a).
6 Because the Lawsuit was pending in Los Angeles within the Central District, the right to remove
7 is limited to the Central District and then only if that district court would have jurisdiction under
8 28 U.S.C. § 1334 (which it does not).

9 Federal circuits addressing attempted removals under 28 U.S.C. § 1452(a) to federal
10 districts other than the geographic district in which the state court action is pending reject such
11 removals as statutorily improper and not establishing subject matter jurisdiction in court to which
12 the action is removed.⁴ The Eleventh Circuit has held that removal to the wrong district defeats
13 subject matter jurisdiction requiring remand. *In re Nat’l Developers, Inc.*, 803 F.2d at 620. In
14 *National Developers*, the Eleventh Circuit reversed the district court’s denial of remand, holding
15 that remand was required because the removal was defective and therefore subject matter
16 jurisdiction was lacking in the court to which the case was removed. The Eleventh Circuit
17 acknowledged that removal to the bankruptcy court conducting the bankruptcy court proceedings
18 might be a more efficient procedure, but it “was obligated to enforce the procedures selected by
19 the Congress.” *Id.* at 620.⁵

21 ⁴ The Ninth Circuit has not addressed whether removal to the wrong district in the context of the bankruptcy removal
22 statute, now 28 U.S.C. § 1452, defeats subject matter jurisdiction or simply constitutes defective venue requiring
23 remand. The issue was discussed in *In re Bisno*, 433 B.R. 753 (Bankr. C.D. Cal. 2010). *Bisno* acknowledged the
24 lack of Ninth Circuit authority on the issue, and remanded the adversary proceeding due to improper venue.

25 ⁵ The *National Developers* court reached its decision even though 28 U.S.C. § 1478(b) provided that an order
26 denying a motion for remand “is not reviewable by appeal or otherwise.” According to the Eleventh Circuit, non-
27 reviewability under § 1478(b) applied only to discretionary decisions whether or not to remand. It went on to hold
28 that remand was required because the court to which the action was removed lacked subject matter jurisdiction given
the unlawful removal. The Eleventh Circuit joined both the Fifth Circuit (*see Browning v. Navarro*, 743 F.2d 1069,
1076 n. 21 (5th Cir. 1984)) and Third Circuit (*Pacor, Inc. v. Higgins*, 743 F.2d 984, 993 n. 14 (3rd Cir. 1984)), both
of which had reached the same conclusion regarding reviewability of remand denials. While a later Eleventh Circuit
opinion, *Peterson v. BMI Refractories*, 124 F.3d 1386 (11th Cir. 1997), found that removal to the wrong district
under 28 U.S.C. § 1441, the non-bankruptcy removal statute, was a procedural defect that does not deprive the
receiving court of subject matter jurisdiction, it noted that *National Developers* “remains the law of this circuit with
respect to the bankruptcy removal statute.” *Peterson*, 124 F.3d at 1393-1394 (citing the predecessor to § 1452(a)).

1 In addition, the Third Circuit has also determined that removal to a district other than the
2 district in which the state court proceeding is pending renders the removal void *ab initio* for lack
3 of subject matter jurisdiction. *In re Bobroff*, 766 F.2d at 801-802 (quoting *Pacor, Inc. v. Higgins*,
4 743 F.2d 984, 993 (3rd Cir. 1984)) (removal not permitted by the predecessor statute to § 1452(a)
5 was “flatly impermissible *ab initio* as a matter of law”). Although the Ninth Circuit has not ruled
6 on this specific issue, it has made clear its support for the strong presumption against removal
7 jurisdiction and that removal jurisdiction must be rejected “if there is any doubt as to the right of
8 removal in the first instance.” *Gaus*, 980 F.2d at 566. Accordingly, it is likely that it would view
9 the unauthorized removal as a jurisdictional defect.

10 TRMC’s Notice of Removal cites 28 U.S.C. § 1334(b) as additional authority for its
11 removal of the Lawsuit. Dkt. No. 1, p. 3:3-26. However, § 1334 provides no vehicle for removal
12 of a state court action, the matter at issue here. Removal is governed by a different statute, 28
13 U.S.C. § 1452, and removal rights are strictly construed. *See Gaus*, 980 F.2d at 566. TRMC cites
14 a single case, *In re Fietz*, 852 F.2d 455 (9th Cir. 1988), to support its argument that the Court has
15 jurisdiction over the Lawsuit. But *Fietz* merely discusses the standard for what constitutes a
16 “related” case under 28 U.S.C. § 1334(b). That provision does not establish an independent
17 jurisdictional basis for removal.

18 In sum, TRMC’s removal to the Eastern District of California was improper and
19 unauthorized by statute and should not be treated as bestowing subject matter jurisdiction on this
20 Court. At a minimum, the Lawsuit is legally required to be remanded for improper venue.

21 **B. Remand Is Required By The Parties’ Contractual Selection Of Los Angeles**
22 **Superior Court As The Proper Forum For The Lawsuit.**

23 Remand also is required by the forum selection clause in the MSA. *See* Dkt. No. 11, Ex. 3
24 (MSA), p. 55, § 11(d). TRMC and HCCA selected the Los Angeles Superior Court as “the
25 exclusive jurisdiction and venue” for all disputes arising under the MSA. Dkt. No. 4, p. 10 (at
26 1:25-27). TRMC and HCCA also agreed that it “shall be deemed to be made in, and in all
27 respects shall be interpreted, construed, and governed by and in accordance with, the Law of the
28 State,” with “State” defined as “the State of California.” *See* Dkt. No. 11, Ex. 3 (MSA), pp. 4

(§ 1(z)), 40 (§ 11 (d)). As a result, California law governs the enforceability of the forum selection clause. California supports enforcement of not only the parties' choice of law but also contractual forum selection clauses. *Cal-State Bus. Prods. & Servs., Inc. v. Ricoh*, 16 Cal.Rptr.2d 417, 425 (Ct. App. 1993), *as modified* (Feb. 4, 1993); *see also Smith, Valentino & Smith, Inc. v. Superior Court*, 551 P.2d 1206, 1209 (Cal. 1976). Mere inconvenience or additional expense in litigating in the selected forum do not defeat a forum selection clause. *CQL Original Prod., Inc. v. Nat'l Hockey League Players' Ass'n*, 46 Cal.Rptr.2d 412, 416 (quoting *Cal-State Bus. Prods.*, 16 Cal.Rptr.2d at 425). As the *Smith* court stated "No satisfying reason of public policy has been suggested why enforcement should be denied a forum selection clause appearing in a contract entered into freely and voluntarily by parties who have negotiated at arm's length." *Smith, Valentino & Smith, Inc.*, 551 P.2d at 1209. The party challenging enforcement of the clause normally bears the burden of proof. *Id.* The MSA also contains an arbitration clause and it is possible one party or the other may seek to compel arbitration and later seek to confirm or enforce an arbitration award. The Los Angeles Superior Court would clearly be the proper forum for such issues pursuant to the MSA.

C. Remand Is Appropriate Because HCCA Is Entitled To A Jury Trial.

The Lawsuit also should be remanded to honor HCCA's right to a jury trial on the Complaint, one of the 14 factors listed in *In re Roman Catholic Bishop of San Diego*, 374 B.R. at 761-762.

The constitutions of both the United States and California guarantee the right to a jury trial of civil legal actions involving disputed issues of fact. *See* U.S. Const. amend. VII; Cal. Const. art. I, § 16. Among the causes of action in the Lawsuit entitled to a jury trial under California law are the multiple claims for breach of contract and claims of TRMC itself for fraud. *See De Guere v. Universal City Studios, Inc.*, 65 Cal.Rptr.2d 438, 455 (Ct. App. 1997) (breach of contract); *Entin v. Superior Court*, 146 Cal.Rptr.3d 52, 60-61 (Ct. App. 2012) (declaratory relief); *Tibbitts v. Fife*, 328 P.2d 212, 215 (Ct. App. 1958) (fraud).

Here, HCCA and TRMC both assert claims for breach of contract and declaratory relief regarding their contractual rights. TRMC also asserts fraud-based claims. Under both the federal

1 and state constitutions, each of HCCA and TRMC has the right to a jury trial on those claims.
2 And HCCA has the right to defend against the multiple defenses at law pled by TRMC in its
3 answer. Remand of the Lawsuit to state court would not only give respect to the parties' choice
4 of forum; it would also restore a forum where a jury trial can be provided as mandated by the two
5 constitutions. As noted, *supra*, HCCA already has filed its Statement of Non-Consent Regarding
6 Removed Action [Bankruptcy Rule 9027(e)(3)], informing the Court and TRMC that HCCA does
7 not consent to the entry of final orders or judgment by the bankruptcy court. Furthermore, in
8 accordance with 28 U.S.C. § 157(e), HCCA does not consent to this Court conducting a jury trial
9 even if the Court otherwise has jurisdiction to hear the merits of the Lawsuit, which HCCA
10 submits it does not. This is a significant factor weighing in favor of remand of these non-core
11 state-law claims. *See Federal Home Loan Bank of Chicago*, 448 B.R. at 526 ("Plaintiff's right to
12 a jury trial is in itself a reason to grant equitable remand.").

13 **D. State Law Issues Predominate Over Bankruptcy Issues.**

14 The fourth of the fourteen factors identified in the case law favoring remand is that state
15 law issues predominate. The causes of action in the Lawsuit pertain to the contractual
16 relationship between TRMC and HCCA under which HCCA operated the Hospital. That
17 relationship is governed by state law. The tort and California False Claims Act claims alleged in
18 the Counterclaim will be decided under California law. The same is true of the breach of contract
19 claims that both parties assert and all of the TRMC fraud claims. In short, every cause of action
20 alleged in the Complaint and ten of the eleven causes of action in the Counterclaim and the
21 TRMC basket of defenses arise under, and are governed solely by, state law. This factor, too,
22 underscores that it is equitable to remand the Lawsuit to the state court for resolution.

23 **E. Other Equitable Factors Favor Remand.**

24 An additional five of the fourteen factors that guide remand decisions favor remand of the
25 Lawsuit. *See In re Roman Catholic Bishop of San Diego*, 374 B.R. at 761-762. The first is
26 whether there is a jurisdictional basis for the removed action other than 28 U.S.C. § 1334. Here,
27 there were none when the Lawsuit was removed. TRMC later alleged a claim for equitable
28

1 subordination under 11 U.S.C. §§ 105(a) and 510(b), but it did so only as one of 11 causes of
2 action in a counterclaim filed in an unlawfully removed proceeding.

3 The second additional factor supporting remand is whether it is feasible to sever the state
4 law claims from core bankruptcy matters to allow judgments to be entered in state court. Since
5 the Lawsuit is based entirely on state law issues, there is no core bankruptcy matter from which it
6 must be severed before remand.

7 The third additional factor supporting remand is the burden on the bankruptcy court's
8 docket. Remand would reduce that burden. The Court already is overseeing a contentious and
9 complicated chapter 9 case. Resolving discovery disputes, hearing pre-trial motions, and
10 administering a trial on the Lawsuit would consume precious court time – all so the Court could
11 decide 13 causes of action governed wholly by California law. This is a burden the Court should
12 not bear.

13 The fourth additional factor supporting remand is the likelihood that the commencement
14 of the proceeding in bankruptcy court involves forum shopping by one of the parties. There is
15 such evidence here. In his comment to the public and the media, the now Chair of TMRC Board
16 expressed his disdain for Los Angeles in attacking HCCA, announcing that the District should
17 “renegotiate or throw out the current HCCA contract.... [and] do it ‘the Tulare way’—not the
18 Southern California divisive, divisive secretive, and machine politics way.” Dkt. No. 4, pp. 15-16
19 (at 6:26-7:1).

20 The fifth additional factor supporting remand is the presence in the proceeding of non-
21 debtor parties. Non-debtor parties will be present in the Lawsuit. Both HCCA's Complaint and
22 TRMC's Counter Claim name a total of 70 fictitious parties; 50 by TRMC alone. HCCA notes
23 that Doe defendants are disfavored in federal court. *Fifty Assocs. v. Prudential Ins. Co. of Am.*,
24 446 F.2d 1187, 1191 (9th Cir. 1970).

25 **IV. CONCLUSION**

26 Remand is not only required because TRMC's removal was not authorized by law but it
27 also would honor the parties' agreement that the exclusive litigation venue would be Los Angeles
28 Superior Court. Remand would render unto the state court issues and claims that are the state

1 court's to decide. HCCA respectfully urges the Court to remand the Lawsuit to the Los Angeles
2 Superior Court.

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4 Dated: January 24, 2018

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